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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/432,192	11/02/1999	DANIEL KUEHN	99-13	9730
30031	7590	10/23/2003	EXAMINER	
MICHAEL W. HAAS, INTELLECTUAL PROPERTY COUNSEL RESPIRONICS, INC. 1010 MURRY RIDGE LANE MURRYSVILLE, PA 15668			WALTON, GEORGE L	
		ART UNIT		PAPER NUMBER
		3753		
DATE MAILED: 10/23/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/432,192</b>	Applicant(s) <b>Kuehn</b>
	Examiner <b>George L. Walton</b>	Art Unit <b>3753</b>
		
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --		
<b>Period for Reply</b>		
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>THREE</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.		
<ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>		
<b>Status</b>		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Oct 31, 2001</u>		
2a) <input type="checkbox"/> This action is FINAL.      2b) <input checked="" type="checkbox"/> This action is non-final.		
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.		
<b>Disposition of Claims</b>		
4) <input checked="" type="checkbox"/> Claim(s) <u>1-4, 6-14, 20, and 21</u> is/are pending in the application.		
4a) Of the above, claim(s) _____ is/are withdrawn from consideration.		
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.		
6) <input checked="" type="checkbox"/> Claim(s) <u>1-4, 6, 7, 9-12, and 21</u> is/are rejected.		
7) <input checked="" type="checkbox"/> Claim(s) <u>8, 13, 14, and 20</u> is/are objected to.		
8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.		
<b>Application Papers</b>		
9) <input type="checkbox"/> The specification is objected to by the Examiner.		
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. <p style="margin-left: 20px;">Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p>		
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. <p style="margin-left: 20px;">If approved, corrected drawings are required in reply to this Office action.</p>		
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.		
<b>Priority under 35 U.S.C. §§ 119 and 120</b>		
13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). <p style="margin-left: 20px;">a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of:</p> <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> Certified copies of the priority documents have been received.</li> <li>2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</li> <li>3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> </ol>		
<p style="margin-left: 20px;">*See the attached detailed Office action for a list of the certified copies not received.</p>		
14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e). <p style="margin-left: 20px;">a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.</p>		
15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		
<b>Attachment(s)</b>		
1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input type="checkbox"/> Other: _____		

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-7, 9, and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by McCombs et al (6,427,690 B1). The first and second single piece housings with a plurality of cavities are readable on elements 12 and 14. The flow generating means is readable on the pressurized oxygen cylinder disposed in the chamber 16. The gasket and circuit board is readable on elements 50 and 52. The valve is readable on element 20. The fastener means are inherent for elements 12 and 14.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCombs et al (6,427,690 B1).

To one of ordinary skill in the art, at the time the invention was made, it would be obvious to use screw type fasteners to hold two housing parts together. Such is well known in the art. Therefore, it is obvious to use screw

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type fasteners to hold housing elements 12 and 14 together, if desired.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenyon et al. The tortuous path is readable on element 92. The first and second housing portions are readable on element 10 and the cover not shown (see column 4, lines 50-58). It is inherent that the cover has a plurality of cavities to receive the cavities of element 10 as shown in the drawings. The flow generating means is readable on element 13. See column 6, lines 40-67. The fasteners are inherent.

*Allowable Subject Matter*

Claims 8, 13-14 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George L. Walton whose telephone number is (703) 308-2596. Upon receipt of this action, the applicant and/or attorney is invited to contact the examiner to discuss the above action. My normal business hours are between 8:30 AM to 5:00 PM. Should any attempt after one business day to reach the examiner by telephone is unsuccessful, you may contact the supervisor, Mr. David Scherbel on (703) 308-1272. My fax number is (703) 308-7765.

Any inquiry of a general nature or relating to the status of this application and any pre-examination proceedings on this application should be directed to the receptionist whose telephone number is (703) 308-0861.

GLW  
October 22, 2003

  
GEORGE L. WALTON  
PRIMARY PATENT EXAMINER  
TECHNOLOGY CENTER - 3700  
ART UNIT - 3753